

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN REYNA,

Plaintiffs,

vs.

GUSTAVESON, et al.,

Defendants.

1:20-cv-01315-JLT-GSA-PC

**ORDER DENYING MOTION TO
COMPEL AND MOTION FOR ISSUANCE
OF SUBPOENA AS UNTIMELY**

(ECF Nos. 19, 20.)

John Reyna (“Plaintiff”) is a Kings County Jail inmate proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on September 14, 2020. (ECF No. 1.)

On May 8, 2023, Plaintiff filed two motions, a motion to compel and a motion for issuance of a subpoena *duces tecum*. (ECF Nos. 19, 20.) Defendants have not opposed the motions. Plaintiff seeks a subpoena compelling third party Wellpath, Inc. to produce documents not available to Plaintiff from Defendant Dr. Gustaveson due to Defendant’s failure to respond

1 to a request for production of documents. Plaintiff alleges that this information is vital for the
2 progression of this case. Plaintiff requests a subpoena directing Wellpath, Inc. to provide him
3 with (1) all of Plaintiff's medical records during his incarceration at Kings County Jail, (2) any
4 and all medical grievances and requests that Plaintiff filed, and (3) a copy of any rules,
5 regulations, and policies on prescribing and removing of medications.

6 Plaintiff also seeks to compel Defendant Dr. Gustaveson to respond to Plaintiff's
7 interrogatories and request for production of documents.

8 Plaintiff's motions are untimely, and Plaintiff has not shown good cause to reopen
9 discovery. The Scheduling Order of October 11, 2022 established a deadline of April 11, 2023
10 for the parties to complete discovery, including the filing of motions to compel, and this deadline
11 has not been extended. (ECF No. 16.) Plaintiff filed his motion to compel and motion for
12 issuance of a subpoena, on May 8, 2023, after the April 11, 2023 deadline expired.¹ Thus,
13 Plaintiff's motion is untimely. To reopen discovery at this juncture would require modification
14 of the court's Scheduling Order.

15 Modification of the court's Scheduling Order requires a showing of good cause, Fed. R.
16 Civ. P. 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth
17 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking
18 the modification of a scheduling order must generally show that even with the exercise of due
19 diligence, he or she cannot meet the requirement of the order. Id. If the party seeking to amend
20 the scheduling order fails to show due diligence, the inquiry should end and the court should not
21 grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087
22 (9th Cir. 2002). The court may also consider the prejudice to other parties.

23 Plaintiff has not demonstrated that with due diligence he could not have completed
24 discovery by the April 11, 2023 deadline established by the court's Scheduling Order. The
25 discovery phase in this action lasted four months, from December 11, 2022 until April 11,
26 2023. Plaintiff has not explained why he could not complete his discovery requests within the

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28 ¹ Plaintiff's motions were both signed by Plaintiff on April 27, 2023, which was also after
the discovery deadline. (ECF Nos. 19, 20.)

1 time allowed. Moreover, reopening the discovery phase of this action would almost certainly
2 cause the trial to be delayed, which would prejudice Defendants. This case was filed more than
3 two years ago and should not be further delayed. Therefore, Plaintiff's motion to compel and
4 motion for issuance of a subpoena must be denied.

5 Accordingly, based on the foregoing, Plaintiff's motion to compel and motion for
6 issuance of a subpoena, filed on May 8, 2023, are DENIED.

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8 IT IS SO ORDERED.

9 Dated: June 29, 2023

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE